

National Steels Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-2005

Reported in : (2006)(105)ECC349

Judge : M Ravindran

Appellant : National Steels

Respondent : C.C.E.

Judgement :

1. The appellants have preferred an appeal against the Order-in-Appeal dated 10.2.2003 wherein the Commissioner (Appeals) upheld the confirmation of the duty against the appellant.
2. Relevant facts for consideration in the case are that the appellant is a manufacturer of M.S. products falling under Chapter No. 72 of the schedule to the Central Excise Tariff Act, 1985, and was also availing Modvat credit facility. The appellant during the month of June and August 1995, availed Modvat credit on the M.S. scrap. The appellant availed the Modvat credit on the duty paying documents issued by M/s Mahabir Prasad & Co., Ghaziabad. The said M/s Mahabir Prasad & Co. was subjected to scrutiny by the officers and the officers found that the said M/s Mahabir Prasad & Co. issued invoices for 'M.S. scrap', a description shown on the original and duplicate copy of the invoices, while the triplicate copy of the same invoice was showing description of the "Empty Containers". The said M/s Mahabir Prasad & Co. was issued a show cause notice-cum-demand dated 16.7.96, and

the current appellant was shown as one of the co-noticee for the imposition of penalty under Rule 173Q of Central Excise Rules, 1944. In one of the annexure to the said show cause notice dated 16.7.96 issued to M/s Mahabir Prasad & Co., the current appellant was shown as recipient of the invoices under which no goods were delivered, but only invoices were issued, for availing the Modvat credit. The said show cause notice was adjudicated and the current appellants were penalized u/r 173Q of CER, 1944. The current appellant paid off the penalty imposed on them. The department issued a show cause notice on 18.5.99 to the appellant, seeking to reverse the credit of the duty availed by them on the very same invoices. The adjudicating authority, on adjudication, confirmed the demand and also imposed a penalty on the appellants. On appeal, the Commissioner (Appeals) upheld the confirmation of demand but set aside the penalty imposed on the current appellant.

3. Shri Bipin Garg, the learned Advocate submits that the current show cause notice issued to the appellants is totally time-barred and is not in consonance with the settled law on the issue. He submits, that, the appellants were not aware that the seller of the material "MS scrap" was erring while preparing the duty paying documents. He also further submits that when the appellants purchased the MS scrap from the said Mahabir Prasad & Co., they received the scrap from their seller, hence the allegations that the appellants have not received 'MS scrap' is ill founded, and submits that the impugned order suffers from the infirmity.

4. Shri Sanjay Kumar, the learned DR on the other hand, submits that the appellant was very much aware that he was availing credit of the duty only on paper transaction. The learned DR further submits that, availment of credit without receiving he inputs is proved from the fact that the description of goods on the third copy of the invoice of the seller did not match with the description on the invoices on which credit was availed by the appellants. He further submits, that, the seller could have procured cheap scrap from the market and despatched to the appellant. On the time-bar issue, he submitted that the investigation was in progress and hence the show cause notice was issued in time.

5. Considered the submissions made by both sides and perused the records. I find that the appellants have been issued a show cause notice on 18.5.99 for the availment of credit in June & August 1995.

6. The Revenue were aware during 1996 that one of the recipient of wrong credit transferred by M/s Mahabir Prasad & Co. This fact is borne out from the show cause notice dated 16.7.96 issued to M/s Mahabir Prasad & Co. The said show cause notice lists the name of the current appellant in one of the annexure and the amount shown in that show cause notice is the same as is being demanded from the appellants in the current proceedings. The earlier show cause notice dated 16.7.96 also seeks to impose penalty on the appellants under Rule 173Q of CER, 1944.

7. I find that the authorities were very callous in 1996 not to issue any show cause notice-cum-demand notice to the current appellant, for availing the ineligible Modvat credit. It is also seen from the records and proceedings, that, investigation got culminated in 1996 and no further statements were recorded of the current appellant. In the absence of any such evidence, it cannot be held that the investigation was in progress.

8. The Hon'ble Tribunal in the case of Gannon India Ltd. v. C.C.E., Goa has held that "Demand - Limitation - Delay in issue of show cause notice - Show cause notice issued after two years of completion of enquiry - Suppression of facts - Appellant's contention that the construction of bridge was before the eyes of the general public hence no suppression, accepted - period of delay in issuing show cause notice being identical to the period of delay in J.S.L.

Industries Ltd. v. C.C.E., Ahmedabad 1999 (109) ELT 316 (Tri), demand being time barred, not sustainable - Section 11A of Central Excises Act, 1944." 9. The said decision of the Hon'ble Tribunal is upheld by the Hon'ble Supreme Court reported in 2002 (146) ELT A-313.

10. I find, that, in this case the investigations were complete in 1996 itself and the department chose not to issue any show cause notice to the current appellant. Hence, show cause notice issued to the current appellant on 18.5.99 is clearly

void and not sustainable in view of the upholding of the decision of Gannon India's case by the Hon'ble Supreme Court.

11. In view of the above situation, the impugned order of the Commissioner (Appeals) deserves to be set aside. The impugned order is set aside and appeal of the appellant is allowed, with consequential relief, if any, to the appellant.

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